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April 29, 2004



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20523

ENTERED
Office of Proceedings

APR 30 2004

Part of
Public Record

Re: Finance Docket No. 34054, Morristown & Erie Ry., Inc. – Modified Certificate

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of the Supplement to the Petition of Five New Jersey Municipalities to Reopen. Also enclosed is a diskette containing a copy of the petition in Word Perfect format.

Sincerely,

A handwritten signature in ink, appearing to read 'Scott N. Stone'.

Scott N. Stone

enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34054

Morristown & Erie Railway, Inc. –
Modified Certificate

SUPPLEMENT TO
PETITION OF FIVE NEW JERSEY MUNICIPALITIES
TO REOPEN



APR 30 2004

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Public Record

Petitioners, the New Jersey municipalities of Springfield, Summit, Kenilworth, Roselle, and Roselle Park (hereinafter “the Five Municipalities”)¹ hereby respectfully file this supplement to their January 5, 2004 Petition to Reopen to bring to the Board’s attention the potential effect on the lines at issue of a recent Board decision, another pending Board proceeding involving solid waste movements from Staten Island, and filings and a public statement made by Union County at the Conrail oversight hearing in Trenton, NJ on April 2, 2004. Those decisions, filings and statements raise the specter that the lines at issue here -- formerly abandoned lines of the Rahway Valley Railroad (“RVRR”) and Staten Island Railway (“SIRY”) -- could carry far more traffic, including environmentally sensitive traffic such as solid waste and lengthy intermodal trains, than the “three trains a week” previously stated as Union County’s expectation for the level of traffic on these lines. The Five Municipalities submit that the potential for this additional traffic must be taken into account in the Board’s environmental review of the operation of these lines by M&E under the Modified Rail Certificate granted by the Board in its decision of July 5, 2002.

¹ The municipalities are formally known as the Township of Springfield, the City of Summit, the Borough of Kenilworth, the Borough of Roselle, and the Borough of Roselle Park.

Specifically, the Board's environmental review should take account of the following new factors:

1. Port Authority Chemical Coast Connector, and Union County Statement at Conrail Hearing.

Shortly after the Five Municipalities filed their original Petition to Reopen, the Board granted a petition of the Port Authority of New York and New Jersey ("Port Authority") and authorized the construction of a connector between (1) lines of the former SIRY leading from Staten Island and (2) the "Chemical Coast Secondary" line owned by Consolidated Rail Corporation ("Conrail") and operated by Conrail, Norfolk Southern Corporation ("NS") and CSX Transportation, Inc. ("CSX"). Finance Docket No. 34428, Port Authority of New York and New Jersey – Petition for Declaratory Order, decision served January 21, 2004. The connector was portrayed as a replacement for various disused car float operations that formerly connection the SIRY lines. The effect of the connection, according to the Port Authority, would principally be to carry container traffic between the Howland Hook container terminal on Staten Island to the Chemical Coast line.

On its face, nothing in the Port Authority decision authorizes a connection with the portion of the SIRY operated by M&E and at issue in Finance Docket No. 34054, which runs from immediately west of the New Jersey Turnpike to Cranford, NJ. In fact, the Port Authority states that the new connection is intended to be a replacement in part for the connection at Cranford between the former SIRY and the New Jersey Transit line (over which Conrail has the freight rights). (The Cranford junction is also the connection between the portion of the former SIRY controlled by Union County/M&E and the lines of the former RVRP controlled by Union County/M&E.) The Board's decision is limited to authorizing the connector between the former

SIRY line immediately west of the Arthur Kill (the boundary between Staten Island and New Jersey) and the Chemical Coast line, which is located immediately east of the New Jersey Turnpike. The Port Authority petition makes it clear that “[t]he revitalized SIRR will not extend west of the New Jersey Turnpike....” (Port Authority Petition filed October 22, 2003 at 4.)

Nonetheless, it is possible that the bridge connecting the portions of the SIRY controlled by the Port Authority immediately east of the New Jersey Turnpike, and the portions of the SIRY controlled by Union County and the M&E immediately west of the New Jersey Turnpike, might be reconstructed. On information and belief, this bridge, and any easements separating it from the New Jersey Turnpike, are owned by the State of New Jersey. The Five Municipalities submit, however, that the state of ownership and control of the railroad lines in that area is not crystal clear. Indeed, the Board in its decision in the Port Authority case admitted that “[i]t is not clear from the Port Authority’s petition exactly who has or will have rights to operate the various pieces of track that will be involved in this operation.” Decision served January 21, 2004, slip op. at 5.

The intentions of Union County regarding possible intermodal traffic flowing over the lines at issue in Finance Docket No. 34054 were stated on the record recently in the Conrail oversight proceeding. In comments filed March 29, 2004 and presented at the Board’s April 2, 2004 hearing in Trenton, Union County stated, among other things, that:

- The County is working with M&E to offer intermodal service to businesses located on the Rahway Valley and Staten Island Railroad corridors
- The Port of New York/New Jersey is expected to double its business between 2002 and 2010
- The County is working to move a greater portion of this traffic by rail
- Short line operators such as M&E should be able to access traffic directly at yards and interchange points operated by Conrail

In order that the potential environmental effects of the container traffic from Howland Hook may be properly evaluated, Union County and the M&E should clarify on the record that they have no operating or other rights to connect to the lines of the former SIRY controlled by the Port Authority, and that they will not attempt to reconnect the portions of the former SIRY to the east and west of the New Jersey Turnpike, either now or in the future. In the absence of those assurances, the Board's environmental assessment should take into account the possibility that intermodal traffic moving to and from Howland Hook might use the lines of the former SIRY operated by M&E between the New Jersey Turnpike and Cranford Junction (traversing the Borough of Roselle, one of the Five Municipalities), and might transit onward from Cranford over the lines of the former RVRP through Roselle Park, Kenilworth, Springfield and Summit. In this connection, the Five Municipalities have received information indicating ongoing survey work that is part of an effort to rebuild the Cranford Interchange. The M&E should clarify whether it has plans, or is aware of plans, to do so, and the Board's environmental analysis should take into account the possibility that the rebuilding of this interchange could facilitate the movement of high volume traffic over the lines operated by the M&E.

Such intermodal traffic could have a severe effect on traffic in the residential and commercial areas of the Five Municipalities. Intermodal trains can be more than a mile long. It is conceivable that, given the modest geographic size of the petitioning New Jersey municipalities, such trains could simultaneously block every single street traversing the railroad tracks in the entire municipality -- a curtain of moving steel. In the event the train had to stop for some reason, traffic would be completely paralyzed.

2. Pending Decision in Finance Docket No. 34426, Petition of New York City Economic Development Corporation for a Declaratory Order

The New York City Economic Development Corporation ("NYCEDC") currently has pending before the Board a Petition for declaratory order seeking permission to build a new track into a New York City municipal waste transfer facility under construction at the Fresh Kills Landfill site on Staten Island. Significantly, NYCEDC takes the position that it should not only be granted the authority to build this track and to rehabilitate the existing lines of the former SIRY, but that in doing so it should be completely exempt from any state or federal environmental review. On January 30, 2004, the New Jersey Department of Environmental Protection ("NJDEP") filed comments taking no position on the reactivation of the lines or the construction of the new track, but opposing the request to be exempt from environmental review.

Because the solid waste traffic that would be generated from the Fresh Kills facility would move over the same SIRY line previously discussed, there is the potential that it would be able at some point to cross the New Jersey turnpike, transit the M&E portion of the former SIRY through Roselle to the Cranford interchange, and then make its way up the RVRR through Roselle Park, Kenilworth, Springfield and Summit. It is hence doubly incumbent on the M&E to state clearly and precisely that it will never attempt to make a connection with the portion of the SIRY east of the New Jersey Turnpike, or otherwise seek to acquire or move solid waste traffic from Staten Island. If M&E does not so clarify, the Five Municipalities submit that it is incumbent on the Board to include in its environmental analysis the potential for solid waste to move over the lines at issue in Finance Docket No. 34054.

The Five Municipalities believe that NJDEP is correct in opposing the environmental carte blanche that NYCEDC is requesting. It would be truly extraordinary for the Board to find that no environmental analysis is required to reactivate and extend a line to enable it to carry large volumes of one of the most environmentally sensitive forms of traffic – solid waste. And it would be even more extraordinary for the Board to reactivate other lines running through primarily residential neighborhoods without any consideration about the potential that those same solid waste trains might traverse those neighborhoods.

For these reasons, and the reasons stated in the Five Municipalities' original Petition to Reopen filed January 5, 2004, the Board should, in accordance with its responsibilities under NEPA, conduct a thorough environmental review of the effect of reactivating the lines at issue in this docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. Stone", written over a horizontal line.

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Counsel for the Five Municipalities

dated: April 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have served the following parties by overnight courier for delivery
on Friday, April 30, 2004:

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A handwritten signature in black ink, appearing to read "S. Stone", is written above a horizontal line.

Scott N. Stone